

**International Longshoremen's Association and its Locals 19 and 1969 and Reserve Marine Terminals; Hoogewerff Reserve, L.P. and Machinery, Scrap Iron, Metal and Steel Chauffeurs, Warehousemen, Handlers, Helpers, Alloy Fabricators, Theatrical, Exposition, Convention and Trade Show Employees Union, Local No. 714, affiliated with the International Brotherhood of Teamsters, AFL-CIO. Case 13-CD-508**

June 14, 1995

**DECISION, DETERMINATION OF DISPUTE,  
AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

The charge and amended charge in this Section 10(k) proceeding were filed November 15 and 16, 1994, respectively, by the Employer, Reserve Marine Terminals; Hoogewerff Reserve, L.P. (Reserve), alleging that the Respondents, International Longshoremen's Association (the ILA), and its Locals 19 and 1969 violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Reserve to assign certain work to employees they represent rather than to employees represented by Machinery, Scrap Iron, Metal and Steel Chauffeurs, Warehousemen, Handlers, Helpers, Alloy Fabricators, Theatrical, Exposition, Convention and Trade Show Employees Union, Local No. 714, affiliated with the International Brotherhood of Teamsters, AFL-CIO (Teamsters). The hearing was held December 12, 1994, before Hearing Officer Paul Arola.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

Reserve, an Ohio corporation, operates a site on Lake Calumet in Chicago, Illinois, which it leases from the Illinois International Port District, where it is engaged in business as a shipping agent performing the loading and unloading of cargo from lake, river, and oceangoing vessels. During the past calendar year, Reserve purchased and received at its Chicago, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois. During the same period, Reserve received gross revenues in excess of \$1 million. The parties stipulated, and we find, that Reserve is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that International Longshoremen's Association, its Locals 19 and 1969, and Teamsters Local 714 are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of the Dispute*

Reserve began operations in 1992, and is engaged in business as a shipping agent performing loading and unloading of cargo from river and lake barges and lake and oceangoing vessels at its terminal and warehouse at the Calumet Harbor. Reserve employs about 24 employees as crane operators, laborers, and mechanics. These employees are represented by the Teamsters pursuant to a collective-bargaining agreement effective February 3, 1992, through February 2, 1995. No other union has ever represented Reserve's employees.

In early 1992, a meeting was held between Reserve and the following union representatives: Fred Woods, president of Local 19; Felix Buchanon, business representative of Local 19; Harrison Tyler, vice president of the ILA; and Ray Sierra, vice president of the ILA and business agent for Local 1969. At this meeting, the union representatives demanded that the work of loading and unloading oceangoing vessels be assigned to ILA-represented employees. Reserve's officials responded that the work would be assigned to Teamsters-represented employees in accordance with its collective-bargaining agreement. Thereafter, an AFL-CIO dispute resolution panel awarded the work to employees represented by the Teamsters.

In May 1994,<sup>1</sup> Reserve employees began unloading and loading oceangoing vessels for the first time. Reserve unloaded two vessels in May and one in July, September, October, and November.

On September 19, the oceangoing vessel *Petr Emstove* arrived at Reserve's dock and was unloaded by Reserve's Teamsters-represented employees. For the next 4 days, Local 19 picketed Reserve's main gate. The picket signs stated that Reserve "is unfair to the Wages, Hours, and Working Policy of ILA Local 19 . . . ."

On September 22, Local 19 additionally picketed Reserve in a boat in the Calumet river across from the *Petr Emstove*. Because no river pilot would cross the picket line, the ship was stranded at the dock.

On September 26, Reserve filed an 8(b)(4)(D) charge against Local 19 in Case 13-CD-502. In a letter dated October 12, Local 19 disclaimed the work of loading and unloading cargo from oceangoing vessels at Reserve's terminal. Based on this disclaimer, Reserve withdrew its charge.

On October 13, 1 day after the disclaimer, Reserve's part owner and vice president, Steve Joseph, had a meeting with ILA Vice President Sierra. Joseph testified that Sierra continued to claim the work for ILA-represented employees. Joseph asked Sierra how he

<sup>1</sup> All dates hereinafter refer to 1994 unless specified otherwise.

could prevent a recurrence of the picketing. According to Joseph's testimony Sierra stated:

[H]e was going to keep putting the heat on [Reserve] and causing [it] problems, and . . . the ILA had many millions of dollars to spend fighting this and the Teamsters. [Reserve] is not going to do this work. . . . you know if you're not going to use the ILA, you're going to continue to have problems.

On November 15, the oceangoing vessel *Serenade* was scheduled to arrive at Reserve's dock. Prior to its arrival, Local 19 commenced picketing at the gate to Reserve's terminal and in a boat where the Calumet River joins Lake Michigan. The tug boat scheduled to escort the *Serenade* up the river refused to tie up to the *Serenade* because of the picket boat. Reserve was able to contract with another tug to escort the ship to its dock. Local 19's picketing continued on land and water while Reserve's employees represented by the Teamsters unloaded the *Serenade*.

The unloading was scheduled to be completed on November 19. Limited time remained for the vessel to travel through the St. Lawrence Seaway before it closed for the winter.

On November 15 and 16 Reserve filed charges with the Board requesting a temporary injunction and resolution of the jurisdictional dispute by the Board. On November 18, the United States District Court for the Northern District of Illinois granted the Board's application for a temporary restraining order. On December 5, after a full hearing on the Board's petition, the court granted the Board's request for a temporary injunction against the picketing.

#### B. Work in Dispute

The disputed work consists of the loading and unloading of oceangoing vessels by Reserve at its Lake Calumet facility.

#### C. Contentions of the Parties

Reserve and the Teamsters contend that a jurisdictional dispute exists and the Board should resolve the dispute by awarding the disputed work to Reserve's employees represented by the Teamsters. They rely on the Teamsters' collective-bargaining agreement with Reserve, Reserve's preference and past practice, area and industry practice, relative skills, and economy and efficiency of operations.

Local 19 admits that it picketed Reserve in both September and November, but claims that no jurisdictional dispute exists because the picketing was only intended to protest the Employer's failure to conform its wage rates to area standards. Local 19 denies that it is bound by Sierra's October 13 comments, and argues that it has disclaimed any desire to have the disputed

work performed by employees it represents. Local 19 did not offer any evidence regarding the factors considered by the Board in making jurisdictional awards.

The ILA contends that it has no responsibility for the acts of its locals, and that Sierra had no authority to speak for the ILA concerning Local 19's picketing. Local 1969 did not file a brief.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

The parties stipulated that there is no agreed-on method for voluntary adjustment of the dispute that would bind all the parties.

To summarize, the record shows that in 1992, after Reserve entered into a collective-bargaining agreement with the Teamsters, ILA Vice Presidents Sierra and Tyler, Local 19 President Woods, and Local 19 Business Representative Buchanon demanded the work of loading and unloading oceangoing vessels. At that time, Reserve was not yet handling oceangoing vessels. In 1994, when Reserve began performing this work, Local 19 picketed Reserve for 4 days in September, allegedly for an area standards objective. On October 13, 1 day after Local 19 allegedly disclaimed any interest in the oceangoing work, ILA Official Sierra claimed the work in a meeting with Reserve. According to testimony presented by the Employer, Sierra stated that he "was going to keep putting heat on" Reserve, that the ILA had "many millions of dollars to spend fighting this and the Teamsters," and that if the work were not reassigned, Reserve was "going to continue to have problems." The following month Reserve did indeed have "problems"—prior to the arrival of the oceangoing vessel *Serenade*, Local 19 again picketed Reserve.

On the basis of the foregoing, we find reasonable cause to believe that the ILA violated Section 8(b)(4)(D) of the Act. The evidence summarized above shows that ILA Representative Sierra claimed the oceangoing vessel work and threatened Reserve that if the work were not reassigned, there would be continued "heat" or "problems," an obvious reference to the picketing of the prior month.

We further find reasonable cause to believe that Sierra had apparent authority to act as Local 19's agent and that Local 19 violated Section 8(b)(4)(D) as well. Thus, the record shows that representatives of the ILA and Local 19 acted jointly in initially meeting with Reserve and demanding the assignment of the oceangoing vessel work in 1992. In October 1994, Sierra again met with Reserve and threatened to "keep" the

“heat” on, referring to Local 19’s picketing of the previous month. Local 19 would be the beneficiary of the “millions of dollars” that Sierra said the ILA was prepared to spend “fighting” the Teamsters because Local 19 has jurisdiction over the geographical area that encompasses Reserve’s operations. Sierra’s prediction of continued “problems” came true the following month when Local 19 again picketed Reserve and disrupted operations. Under these circumstances, an employer would reasonably believe that Sierra was not only a representative of the ILA, but also was speaking on behalf of Local 19. See *Dentech Corp.*, 294 NLRB 924 (1989).

Because of these statements by Sierra, the record does not support a finding that the picketing had solely an area standards purpose, even though Local 19’s picket signs referred to Reserve’s “unfair” wages, hours, and working policies. Sierra’s statements at the October 13 meeting, for which Local 19 is responsible, lead us to conclude that an object of Local 19’s picketing was to force or require Reserve to reassign the disputed work to employees represented by the ILA and Local 19.<sup>2</sup> Even if Local 19’s picketing had an area standards purpose, one proscribed object is sufficient to bring a union’s conduct within the ambit of Section 8(b)(4)(D).<sup>3</sup>

Having found that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) was committed by both the ILA and Local 19, we conclude that the dispute is properly before the Board for determination. The record, however, contains no evidence that Local 1969 engaged in any conduct that would establish reasonable cause to believe that it violated the Act. The fact that Sierra is also an officer of Local 1969 does not provide a sufficient basis for holding Local 1969 responsible for his conduct because there is no evidence that he was acting in his capacity as a Local 1969 business agent. Cf. *Teamsters Local 886 (Lee Way Motor Freight)*, 229 NLRB 832 (1977) (union responsible for steward’s statements made in the area of his apparent authority). Therefore, we will quash the notice of hearing regarding Local 1969.

<sup>2</sup> There is a conflict between Joseph’s testimony in this proceeding and Sierra’s testimony in the district court proceeding concerning Sierra’s statement at the October 13 meeting. In a 10(k) proceeding, however, a conflict in testimony does not prevent the Board from finding evidence of reasonable cause and proceeding with a determination of the dispute. Thus, we need not resolve this credibility issue, because in a 10(k) proceeding the Board is not required to find that the unfair labor practice alleged has occurred, but need only find that reasonable cause exists to believe that there has been a violation of Sec. 8(b)(4)(D). The Board may consider contradicted testimony in finding reasonable cause. *Electrical Workers IBEW Local 103 (Comm-Tract Corp.)*, 289 NLRB 281 (1988); *Sheet Metal Workers Local 107 (Lathrop Corp.)*, 276 NLRB 1200 (1985); *Carpenters Local 1485 (C. J. Reinke & Sons)*, 254 NLRB 1091 (1981).

<sup>3</sup> *Cement Masons Local 577 (Rocky Mountain Prestress)*, 233 NLRB 923 (1977).

### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

#### 1. Certifications and collective-bargaining agreements

No party claims there are certifications applicable to the work in dispute.

Since it began operations in 1992, Reserve has had a collective-bargaining agreement with the Teamsters which covers the disputed work. No other union has ever represented Reserve’s employees. Therefore, we find that this factor favors an award of the disputed work to employees represented by the Teamsters.

#### 2. Company preference and past practice

Reserve prefers that the disputed work be assigned to employees represented by the Teamsters. Further, Reserve has only used employees represented by the Teamsters, and has never used employees represented by any other union. Therefore, we find that this factor favors employees represented by the Teamsters.

#### 3. Area and industry practice

The record reveals that area companies use unrepresented employees as well as employees represented by the Teamsters and by the Respondents to perform work similar to that in dispute. Therefore, we find that this factor does not favor an award of the disputed work to any group of employees.

#### 4. Relative skills and safety

It is undisputed that employees represented by both the Teamsters and Local 19 have the skills and ability to perform the disputed work. Therefore, this factor does not favor an award of the disputed work to either group of employees.

#### 5. Economy and efficiency of operations

Employees represented by Local 19 are seeking only the work of loading and unloading oceangoing vessels. These employees would have to be requested from a hiring hall for this sole purpose.

The employees represented by the Teamsters are full-time employees who perform all Reserve’s work, including loading other vessels, railcars, and trucks, re-

binding cargo that has come apart, sorting cargo for shipment, and performing routine maintenance on the buildings. It is clearly more efficient to assign the disputed work to Teamsters-represented employees who can perform multiple tasks for Reserve as conditions require than to assign the disputed work to Local 19-represented employees who would be hired to perform one discrete task. Thus, we find that this factor favors an award of the disputed work to employees represented by the Teamsters.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by Machinery, Scrap Iron, Metal and Steel Chauffeurs, Warehousemen, Handlers, Helpers, Alloy Fabricators, Theatrical, Exposition, Convention and Trade Show Employees Union, Local No. 714, affiliated with the International Brotherhood of Teamsters, AFL-CIO are entitled to perform the disputed work. We reach this conclusion relying on the factors of employer preference and past practice, collective-bargaining agreement, and economy and efficiency of operations. In making this determination, we are awarding the disputed work to employees represented by the Teamsters, not to that Union or its members.

#### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Reserve Marine Terminals; Hoogewerff Reserve, L.P., represented by Machinery, Scrap Iron, Metal and Steel Chauffeurs, Warehousemen, Handlers, Helpers, Alloy Fabricators, Theatrical, Exposition, Convention and Trade Show Employees Union, Local No. 714, affiliated with the International Brotherhood of Teamsters, AFL-CIO are entitled to perform the loading and unloading of oceangoing vessels at the premises of Reserve Marine Terminals; Hoogewerff Reserve, L.P., at the Lake Calumet Harbor in Chicago, Illinois.

2. International Longshoremen's Association and its Local 19 are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Reserve Marine Terminals; Hoogewerff Reserve, L.P. to assign the disputed work to employees they represent.

3. Within 10 days from this date, International Longshoremen's Association and its Local 19 shall notify the Regional Director for Region 13 in writing whether they will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

#### ORDER

The notice of hearing is quashed regarding Respondent, International Longshoremen's Association, Local 1969.